Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

RONALD WILLIAMS

Petitioner,

vs.

CITY OF LOS ANGELES

Respondents.

Petition For Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Ronald Williams
Petition In Pro Se
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53 pp

QUESTIONS PRESENTED FOR REVIEW

Plaintiff was a twenty-year member of *Defendant City of Los Angeles'* police department, having risen to the rank of Police Lieutenant II. The City's Chief of Police for alleged disciplinary reasons terminated him. After the "involuntary" termination, plaintiff applied for and the City approved the payment of a pension, under the established provisions of the City's vested pension benefits plan. He then challenged the termination by instituting a State court action. The State action yielded **two** decisions from the intermediate state court of appeal. The **first** decision of **August 10, 1989**, affirmed the judgment of the superior court that State law commanded that the termination be set aside. The **second** decision of **May 10, 1991**, under a provision of the City's charter pension scheme, retroactively nullified the first decision - because of the pension the City had paid plaintiff after the termination. *Plaintiff* brought causes of action in federal court for federal remedies from the termination and from the Second State appeals decision. However, both causes of action were dismissed without trial, on the ground that the second State court of appeals decision of May 10, 1991, *also* precluded federal causes of action: then under Civil Rights Act: now under the Declaratory Judgment Act.

I. Whether *full, faith* and *credit* under *28 U.S.C. 1738* can still be applied to a decision of an intermediate state court of appeal, when the decision is shown to violate the laws of the State, and the decision is also shown to be in conflict with decisions of the highest court of the State.

II. Whether a *departure from the accepted and usual course of judicial proceedings* requiring supervisory intervention of this Court is shown by the decisions below: **(a)** that dismissed a civil action brought under the Constitution and Laws of the United States, on a decision of a State court

but whose authority was under a single provision of a charter pension provision; **(b)** when the action dismissed had been brought under an *Act of Congress*, to *challenge* the *constitutionality* of the charter provision, as *applied* and *enforced* by the State court decision.

III. Whether this Court should render plaintiff relief from the judgments and decisions below which are shown to have been obtained by fraud, in light of prior decisions of the Court regarding judgments obtained by fraud.

IV. Whether the regulation and dispositions of Case below give rise for this Court's supervisory intervention, where the Record shows: **(a)** the judgments were obtained by fraud; **(b)** a court relief from a three-year plus default in answering the Complaint; **(c)** a court relief from a three-year entry of default without a petition for relief; and **(d)** the spouse of the trial judge over the Case as being a legal *advisor* of the municipal defendant and the spouse is an *active participant in the affairs of the* defendant.

V. Whether this Case poses a question under the 14th Amendment of the United States Constitution and California public employment, that had not been but should be directly settled by this Court - in light of Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) that is published, and that has since been conflicted by Lucas v. State of California (cited as Daily Journal D.A.R. 13195, Cal.App. 3rd Civ. No. D026856 (Oct. 22, 1997).

To Wit. Whether a public employee of the State who is subjected to an involuntary termination and who then applies for and is paid a service pension, is precluded from the due process and the equal protection of law of being able to state a cause of action in a court of law and equity (State or Federal) from the termination, due to a service pension the employee applies for and is paid the employee after the termination.

List of the Concerned Parties

1. Daryl F. Gates, 150 North Los Angeles Street, Los Angeles California 90012 - (213) 485-4131

2. Robert McNamara, 150 North Los Angeles Street, Los Angeles, California 90012 - (213) 485-4131

3. Connie Castruita, 150 North Los Angeles Street, Los Angeles, CA 90012 - (213) 485-4131[1]

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[1] These are co-defendants of the primary Case that had been brought under the Civil Rights Act, under CV-90-1252 AWT; CA-94-56250. They are included here with defendant City of Los Angeles and the present petition. Because a prayer for relief of the instant petition is for this Court to reinstate the primary case on the ground that the judgment was obtained by fraud. Hazel-Atlas Glass Co. v. Hartford-Empire Co., (1944) 322 U.S. 238; Greenwood v. Peacock, (1966) 384 U.S. 808; U.S. v. Dunnigan, (1993) 507 U.S. 87 (cases of Court's response to judgments obtained by fraud and obstruction of due course of justice)

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1. In The Matter of Los Angeles Police Department Board of Rights Hearing, City of Los Angeles Police Department, In re: Ronald Williams, 11916 (October 19, 1987) (herein 37a-38a)

2. Williams v. City of Los Angeles, California Superior Court No. C 667 976 (Feb. 2, 1988) (38a-39a)

3. In The Matter of Los Angeles Police Department Board of Rights Hearing, City of Los Angeles Police Department, In re: Ronald Williams, 11916 (April 7, 1988) (39a-41a)

4. Williams v. City of Los Angeles, California Superior Court No. C 667 976 (May 18, 1988) (41a-42a)

5. **Williams v. City of Los Angeles, California State Court of Appeal No. Cal.App.2nd Civ. B035287 (Aug. 10, 1989) (cert denied)** (42a-53a)

6. **In The Matter of Los Angeles Police Department Board of Rights Hearing , City of Los Angeles Police Department, In re: Ronald Williams, 11916 (December 8, 1989)** (55a-56a)

7. **Williams v. City of Los Angeles, California State Court of Appeal, 229 Cal.App.3d 1627 (May 10, 1991) (cert denied)** (61a-72a)

8. **In re: Complaint of Judicial Misconduct, No. 96-80370** (Memorandum of Decision of Chief Judge of the United States District Court of Appeal for the Ninth Circuit) (excerpts @ 94a-95a)

9. **Williams v. City of Los Angeles; Chief of Police Daryl F. Gates, individually; Robert McNamara, individually; and Connie Castruita, individually. CV-90-1252 AWT (U.S.D.C., C.D. Cal. 7/27/94)** (30a-33a)

10. **Williams v. City of Los Angeles; Chief of Police Daryl F. Gates, individually; Robert McNamara, individually; and Connie Castruita, individually. CA-94-56250 (9th Cir. Mar. 25, 1996) (affirming cv-90-1252) (petition for writ of cert rejected, not timely filed; request to do so denied)** (25a-30a)

11. **Lucas v. State of California, California State Court of Appeal, Cal.App. 3d. No. D026856 (Oct. 22, 1997)** (152a-157a)

Jurisdiction

The date that the Decision sought to be reviewed was filed by the 9th Circuit Court of Appeal was on **January 20,**

1998. Petitioner timely filed a petition for rehearing, etc. on **February 3, 1998.** The "rehearing petition was denied by the 9th Circuit Court by an Order filed on **March 16, 1998.**

Jurisdiction of this Court to hear the instant petition for writ of certiorari is respectfully invoked under **28 U.S.C. 1254(1).**

The Provisions of the United States Constitution, Federal and State Statutes and Local Ordinances That Are Involved In The Case

A. THE UNITED STATES CONSTITUTION

1. Article I, Section 10.

No State shall pass any ex post facto law.

2 Article III, Section 2.

The judicial Power shall extend to all Cases in Law and Equity arising under this Constitution and Laws of the United States.

3. Article IV, Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof.

4. Article VI, Section 2

The Constitution and the Laws of the United States which shall be made in Pursuance thereof, shall be the supreme Law of the land: Judges in every State shall be bound thereby, and any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

5. Fifth Amendment

No person . be deprived of life, liberty or property, without due process of law, nor shall private property be taken without just compensation..

6. Fourteenth Amendment

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

B. Laws of the United States (federal statutes and federal rules of civil procedure)

1. 18 U.S.C. 1503, Influencing or injuring officer or juror generally. Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner [United States magistrate judge] or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner [United States magistrate judge], or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or other communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5000 or imprisoned not more than five years or both.

2. 18 U.S.C. 1621, Perjury generally Whoever (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states of subscribes

any material matter which he does not believe to be true; or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28 United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined not more than $2000 or imprisoned not more than five years, or both. This sections is applicable whether the statement or subscription is made within or without the United States.

3. 18 U.S.C. 1623, False declarations before grand jury or court (a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both. . . (b) This section is applicable whether the conduct occurred within or without the United States. . . (c) An indictment or information for violation of this section alleging that, in any proceeding before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made tow or more declarations, which are inconsistent to the degree that one of them one of them is necessarily false, need not specify which declaration is false if- . . . (1) each declaration was material to the point in question, and . . . (2) each declaration was made within the period of the statute of limitations for the offense charged under this section. . . . In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant which under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court

or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true. . . (d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed. . . (e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type evidence.

4. 28 U.S.C. 1331 Federal question The district courts shall have original jurisdiction of all civil actions arising under the Constitution and laws, or treaties of the United States.

5. 28 U.S.C. 1343 Civil rights and elective franchise (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of title 42; . . . (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; . . . (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for the equal rights of citizens or of all persons within the jurisdiction of the United States; . . . (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

6. **42 U.S.C. 1983** Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action in law, suit in equity, or other proper proceeding for redress.

7. **28 U.S.C. 2201 Creation of remedy. . .** (a) In a case of actual controversy with its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. . . (b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.

8. **28 U.S.C. 2202** Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

9. **Federal Code of Civil Procedure**

a. **Rule 4(j)(2)** - Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for service of summons of summons or other like process upon any such defendant.

b **Rule 5(b)** - Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

c. **Rule 6(b)(2)** When by these rules or by a notice given under or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect . .

d. **Rule 7(b)(1)** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. . . (3) All motions shall be signed in accordance with Rule 11.

e. **Rule 8(d) Effect of Failure to Deny.** In pleading to a Preceding pleading to which a responsive pleading is required other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

f. **Rule 11(b) Representation to Court** By presenting to the

Court (whether by signing, filing submitting, or later advocating) a pleading, written motion, or other paper, an attorney or un-represented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, - . .(1) it is not being presented for any improper purpose, such to harass or to cause unnecessary delay or needless increase in cost of litigation; . . . (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; . . . (3) the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and . . .(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on information and belief.

g. Rule 12(a)(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer . . . (A) within 20 days after being served with the summons and complaint. .

C. California Statutes

1. California Government Code, Section 3300 et seq., The California Public Safety Officers Procedural Bill of Rights Act:

Section 3300: The chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

Section 3301: Definition, legislative findings and declaration

For purposes of this chapter, the term public safety officer means all peace officers specified.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this

chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the sate and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers as defined in this section, wherever situated within the State of California.

Section 3304(a): No public safety officer shall be subjected to punitive action . . . because of the lawful exercise of any rights under any existing administrative grievance procedure.

Section 3309.5(a): It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

Section 3309.5(b): The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this section.

Section 3309.5©: In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or extraordinary relief to remedy the violation and to prevent further violations of a like and similar nature.

2. California Code of Civil Procedures

Section 1085: Courts which may issue writ; parties to whom issued; purpose of writ.

It may be issued by any court to any inferior tribunal . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment

of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Section 1094.5(f): The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law.

Section 1908(a): The effect of a judgment or final order in an action or special proceeding before a court or judge of this state, or of the United States having jurisdiction to pronounce the judgment or order, is as follows:

(1) In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will, or administrative, or condition of relation of the person.

(2) In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in same capacity, provided they have notice, actual or constructive, or the pendency of the action or proceeding.

D. Charter Of The City of Los Angeles

1. Under-the-terms-and-conditions-of-employment: **(Article XIX) 202(1)** The right of an officer or employee of thePolice Department to hold his office or position an the compensation attached to such office orposition is hereby declared to be a substantial property right

of which he shall not be deprived of arbitrarily or summarily, not otherwise that as herein provided. No officer or employee of the Police Department shall be suspended, removed, deprived of his office or position, or otherwise separated from the service of the Police Department (other than by resignation), except for good and sufficient cause shown upon a finding of "guilty" of the specific charge or charges assigned as cause or causes therefor after a full, fair and impartial hearing before the Board of Rights (except as otherwise specifically provided in paragraphs two (2) and seven (7) of this section). Such charges must be based upon some act committed or omitted by such officer or employee within one (1) year prior to the filing of the complaint referred to herein. No case of suspension with loss of pay shall be for a period exceeding six months.

(2) Provided, however, that the Chief of Police may:

(a) Temporarily relieve from duty any officer or employee of the Police Department pending a hearing before and decision by the Board of Rights of any charge or charges pending against such officer or employee; or he may

(b) Suspend such officer or employee for a total period not to exceed thirty days with total loss of pay and with or without reprimand, subject, however, to the right of such officer or employee to hearing before a Board of Rights. In the event the officer or employee suspended under this subparagraph files his application with the Chief of Police (within five (5) days after service upon him of notice of such suspension if he has been personally served or within ten (10) days if he has been served in any other manner as herein prescribed), for a hearing before and decision by a Board of Rights in the manner in this section provided, such suspension shall thereupon automatically become a temporary relief from duty pending and decision by the Board of Rights. In the event, however, that such officer or employee so suspended under subparagraph (b) of paragraph 2 hereof, fails to apply

for such hearing within the period prescribed, he shall be deemed to have waived such hearing and such suspension remain effective, unless the Chief of Police required that a hearing be had, as hereinafter provided.

Section 202(18): This section shall not be construed to in any way affect any other rights any officer or employee may have to pursue or assert any and all other legal rights or remedies in relation to is office or position or to the compensations attached thereto, or to appeal to or be heard or tried by or before any court or other tribunal of competent jurisdiction, whether such court or other tribunal now exists or may be hereafter created or established.

2. Under-the-terms-and-conditions-of-the-Los Angeles Police and Fire Pension Plan **(Article XVIII)**

Section 190.01: "New Pension System" - There is hereby created, established and adopted, a pension system, which shall be known as the New Pension System, providing pension benefits for certain members of the Fire Department and of the Police Department of the City of Los Angeles and for certain other beneficiaries hereinafter designated. (Added, 1967)

Section 190.02: Definitions: For the purposes of this article and as used in the definitions hereunder, the following words and phrases shall have the meaning ascribed to them in this section, respectively, unless a different meaning is clearly indicated by the context.

a. "Shall" is mandatory; **c. "City"** means City of Los Angeles; **d. "Board"** means Board of Pension Commissioners; **f. "Member of the Police Department"** means a person duly and regularly appointed in the Police Department, under civil service rules and regulations or provisions of this Charter . . . such person shall be a member of said department, only until his status as such shall be terminated by reason of his retirement, resignation or discharge therefrom or for any other reason; **g. "Department**

Member" means a person who is a member of the Fire Department or of the Police Department. **g "System Member"** means a person who is a *Department Member* and whose pension *rights* and *benefits* are governed by this article; **i. "Retired Member"** means a person who is a *former System Member* whose *active status* as a Department Member *had been terminated and who is receiving a pension pursuant to this article.*

Section 190.03: "System Member"

Every person who shall be appointed as a Department Member on or subsequent to the effective date of this article shall become a System Member as of the effective date of such appointment. In no other event shall any other person become a System Member.

Section 190.11:

Any System Member under the age of 70 years who shall have 20 years of service or more shall be retired by order of the Board from further active duty as a Department Member either **(a)** upon filing of his written application therefor . . .Any such Retired Member shall be paid thereafter and for life a monthly service pension in the amount which shall be equal to a percentage of his Normal Pension Base, to wit: for less than 25 years of service, 2% thereof for each year of service; for 25 years of service, 55% hereof; and for each year of service over 25 years of service, an additional 3% thereof, not exceeding in all, however, a maximum of 70% hereof, which maximum of 70% shall be applicable regardless of the Retired Member's service as a System Member.

Section 190.111: Return or Recall of Service Pensioners to Active Duty;

(A)(1) A Retired Member, *whenever retired,* may file, with the Chief of the Department *from which he retired,* a written application to be returned to active duty therein only upon the conditions: **(a)** that his original retirement had been pursuant to *Section 190.11* while holding the rank no higher

than Engineer or **(II)** from the Police Department while holding a rank no higher that Sergeant. .

Section 190.16: Miscellaneous Provisions

The provisions of this section shall be controlling if there were to be any other provision contained elsewhere in this Article which is or could be construed to be contrary thereto, in conflict therewith or different therefrom.

(1) Any System Member who shall believe that he is eligible to be *retired pursuant to Section 190.11* . . shall have the right to file his written application *to be retired* . . and if it were to determine that the contingencies provided in this Article for retirement . . had happened or occurred as to such member, the Board shall *retire* him in accordance with his written application therefore . . .

(3) Any *former* System Member who shall believe that he is eligible *to be paid a pension* pursuant to Section 190.11 may file his written application *for the payment to him of a pension* . . . within the time prescribed for the filing thereof by any applicable provision of law and the Board, if it were to determine that the contingencies provided in this Article for the payment thereof had happened or occurred as to such former Member prior to the date upon which he had *ceased to be a System Member* and if there is no legal bar or defense to the granting to him of such pension or to any judicial action or proceeding which could be brought by him with respect thereto, [Board] shall grant him the pension in accordance with his written application therefore.

STATEMENT OF THE CASE

I. Introduction

a. The instant petition requests this Court's review of the Opinion of the circuit court below, rendered entirely in favor of *employer* defendant City of Los Angeles' (hereafter "City"). (1a-3a) The Opinion affirms the district court's resolution of **(1)** the motion for entry of default judgment, filed and served by the employee plaintiff Ronald Williams, (hereafter plaintiff) on **June 30, 1993;** (163a) **(2)** a *second* motion for entry of default judgment, filed three years later, in **1996** (19a); **(3)** plaintiff's motion for the trial court to recuse itself from the Case; (17a) and **(4)** the City's motion to dismiss the Complaint. (4a)

b. The Case is an action for Declaratory Judgment and for Injunctive Relief. 28 U.S.C. 2201, 2202. (p.xiv) The property rights and interest the action seeks to protect is plaintiff's employment as a police lieutenant with the City's police department. The failed action below sought to vindicate the City's and agents' deprivation of those rights and interests - which are guaranteed plaintiff under *federal, state and local authority.* (Federal, p.x; State, p.xvi; and Local, p.xviii)

1. ***Federal.*** Because plaintiff's position of employment as a police officer is public employment, thus conveyed to him by law, (xviii - "202")) it is subject to protection under the Due Process and the Equal Protection clauses of the U.S. Constitution.[1] (p.x) Because it constitutes a protected property interest, all other constitutional provisions protecting life, liberty and property. [Complaint, para(s) 2&38 et seq.], also protect plaintiff's employment.

2. **State.** Plaintiff is deemed by the State of California to be a *public safety officer* whose employment with the City is subject to the protection of the *State of California Public Safety Officers Procedural Bill of Rights Act.*[2] (p.xvi)

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[1] **Board of Regents v. Roth, (1972) 408 U.S. 564**

[2] **Calif. Govt. Cd. 3300 et seq; Baggett v. Gates, (1982) 32 Cal.3d 128, 135-136.**

Under the "Act": **a.** the State's legislature declares plaintiff's employment interests to be a matter of state-wide concern; (Calif. Govt. Cd. 3301) **b.** makes it *unlawful for any public safety employer to deny or refuse to any public safety officer the rights and protections guaranteed to him by the "Act"*. (id. 3309.5(a)) This includes *the right of access to the superior court.* [P.78a, Complaint, paragraph 13(c)]

The "Act" also vests power to the superior court *to render appropriate injunctive relief or other extraordinary relief to remedy violations.* But in doing so, the superior court is empowered by the Act to not only *remedy the violation,* but it should *prevent future violations of a like and similar nature.* Cal.Govt. Cd. 3309.5©. (p.xvii) [P.77a, Complaint para 13(b)]

3. Local. The City's local rule empowers its police chief to subject a police officer to an involuntary termination after an administrative hearing. Los Angeles City Charter, Section 202(1) (p.xviii) A sub-section of the same rule, "(18)" (xx) however, guarantees that the power to terminate employment does **not** effect in any way any other rights. Including right of access to any court to assert all legal rights and remedies related to employment as a police officer for the City.[3]

As a benefit of employment as a police officer with the City, plaintiff was also a "System Member" of the Los Angeles Police and Fire Pension System. One such benefit is that in the *event* of being involuntarily terminated from employment, plaintiff is entitled to the payment of a pension.[4] Provided he met the contingencies: of having served as a police officer with the City; for a minimum of twenty years *prior to the date upon which he ceased being a System Member.* A person ceases being a System Member the instant he is no longer a member of the police department, either by resignation, retirement or by involuntary termination. (p.xx)

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[3] **Art. XIX, Section 202(18) was affirmed by California Supreme Court in 1954 in Skaggs v. City of Los Angeles, 43 Cal.2d 497, 504-505.**

[4] **Skaggs v. City of Los Angeles, (1954) 43 Cal.2d 497, 505**

II. Background

On **October 19, 1987,** after having served as a police officer for the City for twenty years, the City's police chief subjected plaintiff to an involuntary termination. (37a) In The Matter Of Los Angeles Police Officer Board of Rights, (In re: Ronald Williams, #11916). The termination Order made the effective date of the termination, **July 30, 1987.** (37a). On **November 5, 1987,** prior to going to state court to challenge the termination, plaintiff filed application with the City's pension department for payment of a pension. He set forth in the application that he had served requisite 20 year before he was terminated. The application had also been filed within the six-month statutory period to file for the pension.[5]

On **November 11, 1987,** plaintiff through an attorney filed a petition for a peremptory writ of mandate with the State superior court under California Code of Civil Procedure, Section 1094.5, requesting that his termination be set aside. On **December 10, 1987,** the City's pension board approved plaintiff's pension application, pursuant to Article XVIII, Section 190.16(3) (p.xxii) and the pension benefits were made payable to plaintiff, *retroactive to the date* **August 1, 1987, just** *after* the effective date of the termination, which was **July 30, 1987. (39a & 68a, termination; 65a, pension date)**

A. The State Court Petition for Peremptory Writ of Mandate, California Code of Civil Procedure, Section 1094.5. *Williams v. City of Los Angeles, Cal. Sup. Ct. No. C 667976; Cal.App. 2nd Civ. B035287 (Aug. 10, 1989)* (41a-53a)

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[5] **Los Angeles City Charter 363 and 372 mandated that the pension application be filed within six months payments accrued. See Skaggs v. City of LA, 43 C.2d 505 (1954) The pension accrued as due and payable on the "actual" date of the termination. But a recipient may be paid a pension starting the 1st day after the effective termination date - since pension covers the entire period wages were no longer paid by virtue of a termination.**

The first of what would be *three* hearings on the petition for writ of mandate took place on **January 26, 1988.** On **February 2, 1988,** the superior court returned with its Decision (38a-39a) setting aside the termination. The Order also remanded the matter to the City's discipline board for reconsideration of the penalty. On **April 7, 1988,** the City's discipline board and police chief terminated plaintiff a second time. (39a-40a). Plaintiff returned to the superior court by an Order to Show Cause, In re: failure to obey peremptory writ of mandate. The court conducted another full hearing. After that hearing, on **May 18, 1988,** the superior court set aside the City's 2nd termination against plaintiff. Again, the court remanded the matter to the City's discipline board to reconsider the penalty. This time, however, the court explicitly instructed that any penalty imposed be less than a termination. (41a-42a). The City filed notice of appeal with the California State Court of Appeal from the judgment setting aside the termination. On **August 10, 1989,** the California State Court of Appeals ruled entirely in plaintiff's favor. [(42a) Williams v. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989)] On **December 8, 1989,** under the instruction of the California Courts, (judgment/affirming decision) the City's discipline board and police chief reduced the termination to a suspension without pay for a period of 30 days. (54a-56a)

B. The City's Conduct, The **Employer Decision**, Under Article XVIII, Section 190.111(A)(1) of the Los Angeles City Charter (p.xxi) (123a, allegation under 42 U.S.C. 1983)

Three days later, on **December 11, 1989,** the City *refused* to reinstate plaintiff to his employment as it had been ordered to do by the California courts. Instead, its police chief declared plaintiff to be in retirement because of the pension he applied for and the City granted him after the termination.

C. The **City's Conduct Before the State Court**, Allegedly Under Article XVIII, Section 190.111(A)(1).

On **December 13, 1989,** the superior court conducted an "in-camera" hearing from plaintiff's application for Order to Show Cause, regarding the City's refusing to comply with the peremptory writ of mandate. (56a-57a) The City through its attorney, argued that when plaintiff applied for a Pension after the termination and the City approved it, this converted the termination from employment to a retirement from employment. (57a)

On **January 16, 1990,** the superior court conducted a full hearing on the City's new "retirement" claim/defense. (After refusing to enforce the prior judgment (39a) even though affirmed) The issues of the hearing of **January 16, 1990** from the new City claim: **(1)** whether or not plaintiff was retired from the police department when the City paid him a pension after terminating him; and **(2)** if so, whether Section 190.111(A)(1) (p.xxi), a provision applicable to police officers who had been retired, (p.xxi, "190.11") could be used against plaintiff who had been terminated. (p.xviii, "202")

At the superior court hearing, the City's false argument was that plaintiff converted the termination to a retirement on **August 1, 1987** - the effective date the City's approved his pension. As a person retired, the City argued, Section 190.111 could be used to prohibit the reinstatement judgment, (41a) even though the judgment had been since affirmed (42a) from the City's appeal. (58a-59a, argument; 81a, allegation)

The Complaint subject of this petition alleges when the City made its retirement-due-to-pension claim to the superior court, (to avoid complying with the reinstatement judgment) the City neither disclosed to the court, section 190.11 (p.xxi) or section 190.16(3) (p.xxii). [81a, Complaint, para 30]

Had the City's litigant disclosed section 190.11, the superior court would have deemed the argument frivolous, that the pension converted the termination to a retirement from employment. Because section 190.11 is the section that authorizes "retirements". By virtue of the City's termination, (37a) plaintiff could **not** have been retired under 190.11, when he applied for the pension. (82a, Complaint, para. 33-34)

Section 190.16(3) is the codification of the City's obligation to pay a pension to persons involuntarily terminated from police employment, provided the person was a police officer long enough for the benefits to vest. [P.81a, para 30]

At the **January 16th, 1990** hearing, plaintiff 's attorney's (Mr. Labovitz) response was that upon res judicata and the prior affirmed judgment (41a) controlled the question of his right to continue in his employment. (60a, Transcript)

At close of the hearing, the superior court made a fundamental error regarding "vested" pension plans. It determined that *vested pension benefits* consists **only** of what a person contributes to the plan. That a person can be classified as "retired" notwithstanding a termination, if, after the termination, the person applies for *vested benefits.* (60a)

For equitable reasons, however, the superior court still granted plaintiff's amended petition for writ of mandate. From the City's appeal, however, the California State Court of Appeal under *Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991)* reversed. (61a-72a)

III. Pertinent Facts, Procedural Posture

THE "PRIMARY" ACTION UNDER THE CIVIL RIGHTS ACT (S). [Williams vs. City of Los Angeles; Chief of Police Daryl F. Gates; individually; Robert F. McNamara, individually; and Connie Castruita, individually, CV-901252 (AWT) (formerly JMI); CA-94-56250 (9th Cir. 3/25.96)]

On **March 14, 1990,** plaintiff's then attorney filed a three count Complaint with the district court alleging violations of his Civil Rights under 42 U.S.C.1983, 1985 and 2000e (Title VII). (p.120a-124a) The federal action was filed during pendency of the City's State appeal from the Judgment of the superior court resolving the pension question. (57a)

In part, the discrimination Complaint alleged that when the City and its agents instituted disciplinary actions against plaintiff and terminated him from his employment, it was motivated by race. It also alleged that on **December 11, 1989,** when the City refused to comply with the prior reinstatement

Judgments (38a & 41a) even though affirmed on appeal, (42a) that decision was motivated by racial retaliation. (123a) The discrimination Complaint cited Williams v. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989) as the Case where the State issues pertinent to the federal actions, were settled by the California courts in his favor. (121a, Complaint - referring to 42a-53a, Decision)

In lieu of an answer, the City et al. moved the district court to dismiss the actions under 42 U.S.C. 1983 and 1985, and to abstain from the action under Title VII. The City cited and relied on Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941) for abstention. It **(falsely)** contended that an *authoritative state court ruling* in the (pension) matter then pending before the State Court of Appeals, (61a) concerned issues vital to its defense of the entire federal action. The district court did not grant any part of the City's motion to dismiss. It did, however, over plaintiff's opposition, stay the federal action under "Pullman", until resolution of the State appeal. [See England v. Medical Exam., (1964) 375 U.S. 411, 421 (right to prosecute fed. claims after "abstention")]

On **April 21, 1991,** from plaintiff's pro se motion, the district court lifted stay of the action for employment discrimination - the State Court of Appeal having decided the disputed post termination pension question in the City's favor. [61a, Williams v City of LA, 229 Cal.App.3d 1627 (1991)]

a. The Complaint for Declaratory Judgment filed later, was an action to be prosecuted collateral too and for remedies alternative of, the action for employment discrimination. It was also filed to clarify the rights and obligations of the concerned parties that became uncertain during the discrimination litigation. (73a, Complt., para(s)7-9]

The uncertainty was the conflict between the parties of the legal force and effect that the decisions of the State Court of Appeals had on the federal litigation. (Of 1989 and 1991)

*On **July 10, 1992**, the City cited the 1991 State Appeal decision but not disclose the 1989 decision, in an action to*

Dismiss the Complaint for discrimination. 160a, #53. *The district court denied and granted in part the City's motion.* [161a, docket #66; 34a-36a, excerpts of Order] *However, the district court's Order left unresolved, issue and proof* (160a, #56) *of the City's failure to disclose the 1989 State Appeal decision.* **75a, Complaint, para 7b** (allegation of City's 7/10/92 failure to disclose and misrepresentation)

THE ACTION UNDER THE DECLARATORY RELIEF ACT **(subject to the instant petition)**

During the year, 1993. The Filing; The Service; and The Motion for Entry of Default Judgment. Federal Rule of Civil Procedure, Rule 55(b)(1) (with the prayer for relief being requested as provided under 55(b)(2)) 163a, docket #8.

On **April 14, 1993,** plaintiff tried to file the summons, complaint and exhibits of the action under the Declaratory Judgment Act. The Complaint invoked Federal Rules of Civil Procedure, Rule 57 and stated a cause of action alternative too the action under the Civil Rights Act(s). And for remedies alternative too and cumulative of, those sought under the Civil Rights Act(s). [73a, Complaint, paragraph 1&3; 91a, Complaint, last paragraph]

Nevertheless, on **April 23, 1993,** the Clerk of the court and the district court rejected and returned the Complaint for Declaratory Judgment. **Reason.** No leave had been granted to amend the civil rights Complaint.[6]
(122a, Civil Rights Complaint)

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[6] **The executed rejection was retained and not displayed with the instant petition. The requirement to amend the civil rights Complaint in order to proceed with the Complaint for declaratory judgment was not explained. It is not compatible with the record. The civil rights Complaint names the same parties and includes allegations sufficient to encompass those set forth by the declaratory judgment action. The City's deprivatory act of 12-11-89, under City's pension section that underlies the Complaint for Declaratory Judgment, are set forth by allegations 15(h) and 22 of the civil rights Complaint. Herein 122a**

On **May 18, 1993,** plaintiff presented the Complaint for declaratory judgment to the Clerk of the district court, as if it were a new action. It was accepted as such and given different docket number - CV- 93-2973 MRP.[7] On **June 2, 1993,** plaintiff filed Proof of Service with the Clerk of the court, signifying that personal service of the Summons, Complaint and exhibits, was made on a "receptionist" at the office of counsel-of-record for the City in the civil rights action. (163a, docket #3) On **June 10, 1993,** the Case for declaratory judgment was transferred to the same court with jurisdiction of the Civil Rights action. (163a, docket #4). On **June 15, 1993,** the Clerk of the district court received but rejected plaintiff's application and supporting papers for the Clerk to enter default and judgment of default on the Complaint for Declaratory Judgment. (163, docket # entry 6/15/93) **Reason.** The counsel's receptionist at office of counsel of the civil rights action, *was not an authorized agent for the City of LA.* Later, the district court by Order affirmed the rejection for the same reason. (163a, docket #6)

On **June 30, 1993,** plaintiff **filed** and **served** motion to amend the rejection Order. He argued that the Court should have instructed the Clerk to enter the default against the City on the Complaint for Declaratory Judgment and Injunctive Relief. Because the action for declaratory relief was collateral to the action for discrimination, and service was made at the office of the City's attorney-of-record of the discrimination action. The motion also argued that the relief requested by the Complaint was for an amount that, by computation, could be made certain. Thus, Rule 55(b)(1) F.R.C.P. applied. Because money damages were predicated on the City's compliance with the State court judgment affirmed under Williams v. City

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[7] **The Complaint thus had a number other than the number 90-1252 assigned to the Civil Rights action. The declaratory judgment complaint was assigned to a judge other than the one over the civil rights action.**

of Los Angeles, Cal.App. 2nd Civ. B035287 - the remedy to restore employment benefits loss for a specified period.

However, the motion requested the district court itself, for Order of Judgment by default. A request that the district court make a separate finding that the City's default was *willful, vexatious* conduct, was also made by the same motion.

On the very next day, **July 1, 1993,** however, the district court vacated the hearing date on the already served motion to amend, and denied the motion. (163a, docket #9)

On **July 20, 1993,** plaintiff filed a second Proof of Service with the Clerk of the district court. (163a, docket #10) It signified this time that personal service had been made on a deputy clerk of the City on **June 24, 1993,** pursuant to Federal Rules of Civil Procedure, Rule 4. Also on **July 20, 1993,** the Clerk and the district court returned still another request by plaintiff for the clerk to enter a default and a default judgment on the Complaint. This reason for the rejection this time was that the application was not a Clerk's (type) default. (163a, docket entry, dated July 20, 1993) On **August 2, 1993,** a Default by Clerk was entered on behalf of plaintiff and against the City, on the Complaint for declaratory judgment. 164a, #12. **After entry of default only was entered,** plaintiff returned to the pre-trial prosecution of the primary cause of action under the Civil Rights Act. (120a, Complaint; and, 159a, partial docket of that action)

B. On or about **June 20, 1994**, while the City remained in default on the Complaint for declaratory relief, the City's litigant and a co-defendant, acted to obstruct the due course of justice of the "primary" Case under the Civil Rights Act. (121a, Complaint's proof of adverse employer termination)

On the above date, a co-defendant ("Castruita") **falsely** declared under oath by a declaration in writing: That the California State Court of Appeals under Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), had decided plaintiff voluntarily retired from his position of employment. (104a-105a, false declaration) Castruita also falsely declared the same decision to hold the City had

Terminated plaintiff from his employment, on October 19, 1987, but the *effective* date of the termination was **August 5, 1987**. [75a-76a, Complaint para(s) 7(b)-8 (allegations)] **In fact,** in Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), there are at least ten places where the State Court of Appeal acknowledged that the City had terminated plaintiff from his employment. (61a-70a)

Furthermore, the decision placed the *effective* date of the termination as **July 30, 1987**, (68a) thus *before* the pension, of August 1st, 87, (65a) rather than **August 5, 1987** which would have been *after* the pension. (68a)[8]

The Declaration with the altered termination date and false statement that the 1991 State appeal decision was that plaintiff voluntarily retired from employment, was knowingly used by counsel in the Case for employment discrimination. To *corruptly* alter the *"theory"* of the Case; **(1)** from a remedy for an illegal termination from employment; (2) to a remedy notwithstanding a voluntary retirement from employment.

On **March 25, 1996,** the 9th Circuit Court of Appeals affirmed the district court's summary judgment against the Complaint of discrimination.(25a @ 26a) The opinion relied precisely on what had been **falsely** declared too as the decision of the State Court of Appeal of 1991.[9] Instead of what, in fact, had been the decision of the State Court of Appeals (1991).[10]

C. *The Action in the Case for a Declaratory Judgment resumed in the year 1996, after the end of the Case for*

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[8] **"Williams", 1991, also acknowledged that the City paid plaintiff a pension on an effective date after the termination, on August 1, 1987 (65a) Williams v. City of Los Angeles, 229 Cal.App.3d 1627, 1631 (May 10, 1991).**

[9] **That "Williams", 1991 held plaintiff to have voluntarily retired. When he caused the effective date of his pension of August 1, 1987, to be before the effective date of the termination - falsified in the declaration as August 5, 1987**

[10] **In dicta, acknowledged the City's termination of plaintiff from his employment, and that the effective termination date as July 30, 1987. Williams v. City of Los Angeles, 229 Cal.App.3d 1627, 1631, 1633 (May 10, 1991)**

*Employment discrimination, by: **(1)** plaintiff's motion for entry of judgment by default; **(2)** plaintiff motion for recusal; **(3)** by the City's Rule 12(b)(6) motion to dismiss; and **(4)** by plaintiff's appeal of the district court's resolution of each of the just described actions.*

(1) The Motion for Entry of Default Judgment

On **May 28, 1996,** from an Order of the district court, (165a, docket #21) Plaintiff filed and served Notice and Motion For Judgment By Default On Complaint For Declaratory Judgment and for Injunctive Relief; Memorandum of Points and Authorities; Request For Order Granting Request To Exceed Page Limit; Declaration(s). (165a, docket #22)

In part, the points of fact and law placed in issue by the supporting memorandum and declaration, were: * that the City's default was willful, vexatious and of sinister design; purposed to aide in the ultimate successful false defense of plaintiff's other case for employment discrimination; by obstructing and impeding the prosecution of the Case for a declaratory judgment; to impede the issues and claims of the action for declaratory judgment, from being directly considered by the Court in the action for discrimination.

The memorandum particularly describes how the City's and other defendants' summary judgment motion, had misrepresented the 1991 State appeal decision, while not disclosing the 1989 decision - to defeat the action for discrimination. (See previous page 11)

Furthermore, a point by point discussion of fact and law, advanced arguments supporting each and every of the *"justiciable" issues* and *claims,* set forth in the Complaint for Declaratory Judgment - including jurisdictional, under 28 U.S.C. 1331, 1343 and 2201 and 2202. 165a, #s 22 - 24.

*Seven days after the time expired for the City to enter an opposing paper against the motion for entry of default judgment, on **June 24, 1996,** the City filed Defendant City of Los Angeles' Memorandum Of Points and Authorities In*

Opposition to Plaintiff's Motion for Default Judgment; Declaration of Robert Cramer. (98a & 24a, late finding)

The City's filed the opposing memorandum and the declaration, beyond the statutory time for the opposing paper to be filed. (20a, Order Setting Aside Entry of Default, etc.) The supporting declaration, contrary to the oath taken by counsel, cited "Williams v. City of Los Angeles, 229 Cal.App.3d 1627, *1629-30"*, and **falsely** subscribed pages 1629-30 of the opinion to hold, that ***before** the City could determine or enforce the Order terminating Plaintiff from his position of employment, he elected to apply for a service retirement, which the City granted.* (100a, false declaration)

Counsel made the **false** declaration to obstruct the entry of judgment by default. It was an act to *corruptly* influence the district court that the "City" had a meritorious defense against Complaint for declaratory relief. (55c FRCP)

In fact, pages 1629-30 of Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), (63a) does **not** include a finding that plaintiff "elected to retire" *before* he was fired, as falsely declared under oath. (100a) Rather, page "1629" is one of **several** places in the opinion, where the State Court of Appeal acknowledged the City had terminated plaintiff from his employment. (63a, page "1629")

*On **June 26, 1996**, the district court ruled entirely in the City's favor on plaintiff's motion for entry of default judgment. (19a) Including what was falsely declared too.*

The Order: Cited Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) as holding that plaintiff had voluntarily retired from his employment. ("force") (19a) The Order made no reference to Williams v. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989), the affirming decision of his wrongful termination. (41a-53a)

The **Order** stated that the City had to failed to answer or otherwise respond to the Complaint; (19a) that there was an entry of default against the City since **August 2, 1993**, (19a) and that the City, in fact, had been served the Complaint. (22a)

Never the less, despite those findings, the district court still decided that the City had demonstrated a reasonable excuse for the default. The Order set forth, "*it is unlikely that the City consciously defaulted on th[e] Complaint while vigorously defending other claims.* (22a, Order, paragraph 2, under "reasonable excuse")

Finally - the **Order** set forth that there were "*apparent deficiencies in the Complaint*" - since it had been the City rather than Plaintiff, who was the prevailing party in the State court litigation. (23a, Order, para 2)

The Order did not address: the justiciable issues and claims of the underlying Complaint: the pleading in support; or, Williams v City of LA, Cal. App.2nd Civ. B035287 (1989)

(2) The Motion for Recusal

*On **July 12, 1996,** plaintiff moved the district court by noticed motion to recuse the trial judge of the Case. (166a, docket #31) The recusal motion was not opposed.*

The motion to recuse contends:

That the trial judge's "impartially" is questioned and was demonstrated by the "illicit" manner she had regulated and resolved plaintiff's just concluded motion for entry of default judgment. That her partially may stem from the fact that a trial on the merits of the Complaint for declaratory relief exposes the illicit manner the prior Case for discrimination was dismissed. The recusal motion explained how the trial judge knowingly used the City's **false** declaration of plaintiff's voluntary retirement, (100a) as evidence against the relief sought in the motion for default judgment. (19a, Order, page 2 - State decision voluntarily retired from the force) There were also point by point arguments and supporting declared statements of prejudice: regarding all of the applicable rules of civil procedure that subject trial judge had not complied, in her regulation of the prior action on the default judgment motion.

Specifically, the Recusal Motion:

Cited Fed.R.Civ.Proc., Rules 4 and 5, and argued that

when the district court accepted the City's excuse that it had no record of service, plaintiff was deprived of right having proved service, as a matter of law. **(2) Cited** Rule 6, FRCP, and argued of being deprived of right to notice and to defend against the City's untimely opposing paper to the default judgment motion. (3) **Cited** Rule 7, F.R.C.P., and argued of being deprived of the right to be presented with a noticed motion and right to defend, before being subjected to Order that relieved the City from the Clerk's default. (4) **Cited** Rule 12 FRCP, and argued of being deprived of the right not to be confronted with a filed answer to the Complaint, 3 years, instead of the 20 days after proper service. (5) **Cited** Rule 55© F.R.C.P. and argued the right to maintain the entry of default against the City and to obtain judgment by default, absent the City's showing of "good cause". Supported this argument with facts that rebutted "good cause" and supported the contention of "culpable conduct". (5) **Cited** Rule 55(b)(2) and argued of being deprived of the right to a hearing strictly on the merits of the underlying Complaint. Rather than the 55(b)(2) hearing being converted to a Rule 55(c) hearing and "good cause" for relief from default. (20a, Order, page 2, "Legal Standard")

On **July 26, 1996,** the district court issued **Order** denying the motion for recusal. (17a-18a) The Order set forth that the declaration, (supporting false litigation and failure of court to comply with specific rules) *was based entirely on* [plaintiff's] *opinion and belief . . . not legally sufficient as required by 28 U.S.C. 144 . . . not rais*[ing] *any case . . . required by 28 U.S.C. 455."* The **Order** denying recusal also set forth that plaintiff's claims supporting *"are scurrilous, unbelievable, and outrageous, in fact, are so utterly nonsensi-cal that they should not even be in the papers which Plaintiff has filed".* The **Order** also set forth that *Plaintiff's claims are the ravings of someone who is unhappy with himself and also the world, and vents his spleen upon a Judge whose absolute lack of bias is well known. . . "*

(3) The City's Motion to Dismiss (96a)

The City invoked the Full, Faith and Credit Act, res judicata and Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), to support dismissing the Complaint under Federal Rules of Civil Procedure, Rule 12(b)(6). **However,** as it had throughout plaintiff's litigation in federal court. The City's pleading again feigned Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), as holding plaintiff had voluntarily retired, and again withheld Williams v. City of Los Angeles, Cal.App. 2d Civ. B035287 (Aug. 10, 1989), the decision that he was wrongfully fired. (96a-97a) **Pages 1629-30** of the May 10, 1991 decision were again miss-cited as holding that plaintiff had *elected to apply for a service retirement* **before** the City's could determine and enforce its decision to terminate him from his employment. (96a-97a) This was a slight variation of the City's (et al's) false declaration in the prior Case for discrimination. (104a) That "Williams", 1991, decided plaintiff had taken the step of *retiring* on **August 1, 1987**, before the effective *termination date*, **falsely** declared to as being **August 5, 1987**. **(26a)**

On **August 23, 1996,** plaintiff lodged and on **August 26, 1996,** the district court filed, Memorandum of points and authorities in opposition to the City's Motion to dismiss the Complaint for declaratory relief; exhibits and declarations (167a, docket #40)

In part. The opposing paper plead the City's **false** defense under "Williams v. City of Los Angeles, 229 Cal.App.3d 1627 **@ pages 1629-30"**, and cited Williams v. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989), as legal evidence plaintiff had been unlawfully fired.

The opposing paper again demonstrated how the City *concocted* and *fabricated* the *evidence,* under *Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), that Plaintiff had voluntarily retired from his employment.* Exhibit "A" of the opposing paper, is a copy "pages 1629-30" of Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991). Presented as direct evidence of the City's falsifying the 1991 State appeal decision. (63a-65a, pages 1629-30)

Later during oral argument at the hearing on the City's motion to dismiss, Plaintiff drew the district court's attention to "page 1629-30" of the State appeal opinion and he argued the City's misrepresentation. (110a-114a). At close of the hearing, however, the trial judge appeared to be advising the City to change its' defense under the 1991 State appeal decision. By encouraging the City to invoke judicial notice of Record of other parts of the Case(s). (117a-118a, Transcript) Plaintiff objected and invoked the right to notice and to defend, against any parts of any Case, the trial court might consider in the decision on the motion to dismiss. (118a)

On **December 26, 1996,** the district court issued the Judgment and Order granting the City's Rule 12(b)(6) motion to dismiss the Complaint. (4a) It adopted the City's false defense under the Full Faith and Credit Act, Res Judicata and Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991); but without consideration of Williams v. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989)[11]

The trial court relied on what the City had **falsely** declared was the findings of the State Court of Appeal, (1991) when it moved for the summary judgment action against the Case for discrimination. (103a, declaration; 5a, Order) Rather than the trial court relying upon the copy of the 1991 State Appeal decision, attached as Exhibit C to the Complaint for Declaratory Judgment. [92a, "Exhibit C", (referring to Williams v. City of Los Angeles, 229 Cal.App.3d 1627, 1631, 1633)] **Page "1631"** of the decision, (65a) demonstrates the finding that the pension effective date was **August 1, 1987.** But **page 1633** of the decision (68a) contrary to what was falsely declared too as **August 5, 1987,** demonstrates the finding that the effective termination date was **July 30, 1987**

D. THE APPEAL PROCESS: (1) Plaintiff' Motion To Disqualify (certain judges of the 9th Circuit; [125a] **(2)** Plaintiff's Request for Oral Argument; alternatively for

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[11] **Use of the 1991 State appeal decision as evidence that plaintiff retired, in the face of the 1989 decision that he had been fired.**

Judicial Notice; [132a] **(3)** Plaintiff's Citation of Supplemental Authorities [152a] **(4)** Opening Brief; **(5)** Appellee's Brief; **(6)** Reply Brief; [169a] **(7) Opinion of the Circuit Court;** [1a] **(8)** Plaintiff's Request for Rehearing, Suggestion for Rehearing En Banc; and **(9) Order of 9th Circuit Denying and Rejecting** (rehearing and en banc rehearing)

(1) The Motion to Disqualify (125a-131a)

More than a year before the 9th Circuit rendered the affirming decision prompting the instant petition, on **January 21, 1997,** Plaintiff filed and served Motion For Disqualification of (certain) Judges (of the 9th Circuit); Declaration of Prejudice. (158a, docket entry 1/27/97) The motion was not opposed. On **May 2, 1997,** the motion was referred to the merit panel for disposition. (158a, entry for 5/2/97) After that, there was no further action or resolution taken by the circuit court from the disqualification motion. The affirming (1a-3a) decision ending the Case for declaratory relief, makes on mention of the motion to disqualify or the uncontested facts of the motion. (See plnt's pet for rehrg'ing)

Aside from requesting that certain 9th Circuit judges be excluded from the appeal. The recusal advanced that the trial judge in the subject Case for declaratory relief had knowingly obstructed the due course of justice of the Case for declaratory relief. By issuing memorandums, orders and judgments on the City's behalf, that *fraudulently* misrepresented Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), as legal evidence that plaintiff voluntarily retired from his position of employment. While the same memorandums, orders and judgments of the district court on the City's behalf had fraudulently concealed and omitted (from legal consideration) Williams vs. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989), the legal evidence of his wrongful termination. The Circuit Court was also placed on a notice by the motion to disqualify; of the Complaint of Judicial Misconduct that plaintiff had filed against the trial judge, and was pending. (94a and 136a, part of the Record, Complaint of Judicial Misconduct)

(2) The Oral Argument, alternative Judicial Notice Request. (132a)

On **May 10, 1997,** plaintiff filed and served a Request for Oral Argument, alternatively, That The Court Take Judicial Notice. Of the Record on the Complaint of Judicial Misconduct. In the "Request", etc., he requested the opportunity to present evidence of the City's and its' agents' criminal conduct during civil litigation. 18 U.S.C. 1503, 1621 and 1622. Evidence and arguments demonstrating how the trials judge had aided counsel in the proffer of false evidence during the City's hearing on its motion to dismiss the Complaint. Judicial Notice, under F.R.E. 201(b), was invoked. Alternatively, for the Court to consider the entire Record of the Complaint of Judicial Misconduct. Part of that Record is reproduced herein at 94a and 136a.

(3) Citation of Supplemental Authorities

On **October 30, 1997,** under FRAP 28, plaintiff filed and served Citation of Supplemental Authorities. (159a, entry 11/3/97) The subject of the citation was the decision of the California State Court of Appeals under Lucas v. State of California, D026856, filed by the State appeal court on October 22, 1997. (152a, excerpts of "Lucas", etc.) (61a), The law-of-the-case of "Lucas". **Held.** *In a case where an employee is separated from employment involuntarily, his service retirement did not constitute separation from service by resignation, and the service pension does not preclude being able state cause of action from which relief could be granted.* This conflicts with Williams, 1991. (61a)

(4) Opening Brief

The facts, law and the issues of the opening brief of the Case on appeal.

I. ***Under Error of fact and of law.*** *Under Article III, Section 2 of the U.S. Constitution, the district court erred that the Complaint did state claims from which relief could be granted. Because the substantive claim is that a local pension*

Ordinance as enforced, was invalid and unconstitutional and resulted in the deprivation of plaintiff's position of public employment.

II. ***Under Abuse of Discretion.*** *The evidence did not support the Record that the City demonstrated excusable neglect and a meritorious defense. Instead the Record demonstrated the default to be willful and for improper purpose. Including perjury as a defense against the motion for default judgment.* **(a) Also under** ***Abuse of discretion,*** *pertaining to denial of request recusal. That the Record of the Case did, in fact, demonstrate that the trial judge had been biased in favor of City and against plaintiff - demonstrated also by the comments made with the recusal decision.* (17a)

III. ***Abuse of discretion and error in law*** *under 28 U.S.C. 455 et seq. Because the evidence and the City's ultimate admission,*[12] *demonstrated the subject judge's spouse to be an "advisor" of defendant City of Los Angeles, and is an active participant in the City's affairs.* (see opp Mot to dism)

(5) Appellee's Brief

The City again cited Williams vs City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), the Full Faith and Credit Act and res judicata, as its complete defense of the decisions rendered by the district court below ******That Plaintiff could have obtained relief he seeks in the Complaint from the Supreme Court of the United States;* ******That the district court's discretion was appropriate when it denied plaintiff's motion for default judgment;* ******That the district court's decision to deny plaintiff's request to disqualify herself sua sponte was equally appropriate.*

(6) The Reply Brief (restated herein at 169a)

Plaintiff's demonstration continued to reference the Record of the City's false defense under the 1991 State Appeal

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[12] **The City's Brief of Appellee admits plaintiff's claims that the district judge was married to an advisor to the Mayor of defendant City of Los Angeles. Page 29, lines 3 through 4, Dated, April 18, 1997**

Decision. **He cited** decisions of the State's highest court that affirms the law-of-the-case of Williams vs. City of Los Angeles, Cal. App. 2nd Civ. B035287 (Aug. 10, 1989) to be controlling, and the same State Supreme Court decisions invalidate Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991). **He raised** the power of the district court to grant the injunctive relief is affirmed by prior decisions of the U.S. Supreme Court, given the circumstances of the present Case. [Citing and relying in part: U.S. Mitchum v. Foster, 407 U.S. 225 (1945); Dombroski v Pfister, 380 U.S. 479 (1965) and U.S. v. General Motors, 323 U.373 (1945)

(7) Opinion of the Court (1a-3a)

The opinion commenced with "the facts were known by the parties". The Opinion construed that the action for declaratory relief was beyond the district court jurisdiction. Because the Complaint was nothing more than an effort to get the federal court to review errors allegedly committed by the state courts. The Opinion made no direct determinations of the merits of the issues and claims of the action, under Article III, Section 2 of the U.S. Constitution. Nor did the opinion reconcile its determinations with the Cases of this Court affirming actions under Article III, Section 2 of the U.S. Constitution. (cited above with West Min v Watt, 9th Cir)

Without facts or comment, affirmed the decisions denying the motions for default judgment, (1993 and 1996) and setting aside the Clerks default. Without facts or comment, the Court affirmed the decision denying the motion to recuse the trial judge of the Case: under 28 U.S.C. 144 and under 28 U.S.C. 455.

(8) The Request for Rehearing; The Suggestion for Rehearing En Banc

Plaintiff argued that the 9th Circuit overlooked and did not otherwise consider facts, law and issues: *of the actions below as a product of sham pleading and decisions based on false evidence; *that the Circuit Court failed to be bound by decisions of the highest court of the State; *that the Circuit Court misapprehended and/or refused to follow the law under

Federal Rule of Civil Procedure, Rule 12(b)(6); the law under 28 U.S.C. 2201 and 2202 - and a prior decision of the 9th Circuit Court under "2201 and 2202"; *that full, faith and credit had been applied to the wrong decision of the State Court of Appeal, in a manner that is in conflict with "Migra v. Warren City School District v. Board of Education, 465 U.S. 75"; and * given the defaulting parties conduct, the decision to relieve it from default, is in conflict other decisions of the Court respecting when defaulting parties should be sparred from judgments by default.

(9) Order, Denying Rehearing Petition, etc. (36a)

The 9th Circuit Court denied without comment or amendment, the rehearing petition. [See also unpublished]

G

REASONS THIS COURT SHOULD GRANT THE INSTANT PETITION

The Act-of-Congress Exception and the Laws of the State, Preempts Williams v. City of Los Angeles, 229 Cal.App.3d 1627, From Having Any Preclusive Effect On The Case for Declaratory Relief

(a) Act of Congress

In Erie Railroad Co. v. Tompkins, (1938) 304 U.S. 64, Mitchum v. Foster, (1972) 407 U.S. 225, and countless other Cases, this Court has long since affirmed that matters governed by the Federal Constitution or by Acts of Congress, preempt laws of the State, as the authority controlling any Case. **U.S. Constitution, Article VI, Section 2.**

The present Case for declaratory relief was brought under a valid *Act of Congress*, codified under 28 U.S.C. 2201 and 2202, (73a, para 1) It is also known as the Declaratory Judgment Act. **On the other hand,** Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), the authority relied on below to dismiss the Complaint, is nothing but an interpretation and enforcement of a municipal charter pension provision by an intermediate State appeals court. Thus, the Supremacy Clause of the Constitution (Article VI, Section 2); and the invoked federal statutes for declaratory relief, (28 U.S.

C. 2201, 2202) not only preempts the State Court Appeal decision, but confers "original" jurisdiction to the federal court to hear the Complaint challenging it. (28 U.S.C. 1331,1343) [73a, Complnt. para 2 and 84a, Complaint, para 38 et seq.]

(b) The Complaint for Declaratory Judgment and Injunctive Relief Is Well Within The Relevant Statutes and Authorities - Given All of the Circumstances of the Case

Where rights are invaded or imminently threatened, federal courts may give relief by either traditional remedies or by declaratory judgments. Aetna Life Ins Co. of Hartford Conn. V. Haworth, 84 F.2d 695, 698 (8th Cir. 1936); Western Min. Council v Watt, 643 F.2d 618 (9th Cir. 1981).

The rights invaded are set forth at allegations 2 and 38 of the Complaint. They are rights accorded plaintiff under the Expost Facto Clause, the 5th and the 14th Amendment, as well as the right to be free from racial retaliation and from conduct under color of law, violating federally protected rights. [See also, 90a, Complaint paragraph 47] **Furthermore,** the conduct "putatively illegal" and injury contemplated under Western Min. Counsel v. Watt, 643 F.2d 618, 623, is particularly described by the Complaint. (81a, #30) The City is alleged to have avoided the Judgment that reinstated plaintiff's public employment, by willful misapplication and "unlawful" enforcement section 190.111. Since the property interest involved was public employment, this created the interest protected under 14th Amendment of the U.S. Constitution. See Board of Regents vs. Roth, (1972) 408 U.S. 564. These were among the points facts and law under the Due Process and Equal Protection issues of the Complaint. (74a, Complt, para 4(a); 77a, para 13(b)) U.S.Constl., Amend. 14.

In spite of this, the federal court below (4a) dismissed the Complaint, without any regard of the14th Amendment and the other "justiciable" issues and claims of the Case. Including those that invoked "original" jurisdiction of the federal court. under 28 U.S.C. 1331 and 1343. When the above justiciable issues were presented to the 9th Circuit by appeal, they were similarly ignored. (1a) Instead the entire action was held

by the district appeal court to be nothing more that an action to review errors allegedly committed by state courts. (2a)

The below discussion will demonstrate that the legal reasoning of the 9th Circuit not only conflicts with relevant Decisions of this Court, but has so far departed from its responsibility to enforce plaintiff's fundamental constitutional rights, as to call for an exercise of the Supervisory power of this Court.

Mitchum v Foster, (1972) 407 U.S. 225, 242 is one of several of this Court's decisions relied on by plaintiff below. In "Mitchum", etc. the Court recognized that federal courts protect people from unconstitutional actions under color of state law, "whether that action be *executive, legislative* or judicial. U.S. Mitchum v. Foster, 407 U.S. 225, id. 242. "Mitchum", etc., decided in 1972, added 42 U.S.C. 1983 as one of the *"act-of-congress"* exceptions to the anti-injunction statute codified under 28 U.S.C. 1738. The present Case is not only for a remedy under 42 U.S.C. 1983 but is an action under a well recognized and settled Act of Congress: the Declaratory Judgment Act. [28 U.S.C. 2201, 2202]

The below decisions that the federal court is without jurisdiction to hear the claims of the Complaint, also conflicts with this Court's decision under Dombrowski v. Pfister, 380 U.S. 479 (1965) In "Dombrowski", etc., "abstention" was held to be inappropriate where a statute is justifiably attacked on its face. Id. 489-491. "Dombrowski" also held that the ultimate interpretation of a statute is irrelevant to meet claims that it interfered with the exercise of a fundamental constitutional right. (There, free speech) id. Page 490-491.

The present Case for declaratory relief, challenges the validity and the constitutionality of Section 190.111 as it was applied by the State Court of Appeal under Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991). While the federal courts below granted the City's request to dismiss the action, on the authority of the 1991 State Appeal decision. (13a-14a) Even though the dismissal is based on what in "Dombrowski", this Court held to be "immaterial": the

interpretation of a statute (charter provision) by a State court. Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) (61a & 66a, held, for purposes of Section 190.111 *only*, plaintiff is "retired", nullifying remedy from termination)

The 9th Circuit affirming decision also does not comply with the instruction this Court in Borden's Farm Products Co. v. Baldwin, 293 U.S. 194, 204-205, (1934). In that decision, the Court instructs that a complaint under the U.S. Constitution, should not be dismissed for insufficiency upon its fact without appropriate [fact] finding, unless it satisfactorily appears upon facts of common knowledge. id. 204-205.

The most crucial of facts in controversy in the present Case were the circumstances and event separating plaintiff from his employment: whether by *unlawful* termination under Williams v. City of Los Angeles, Cal.App.2nd Civ. B035287 (Aug. 10, 1989), *effective* **7/30/87**, or whether by a voluntary retirement under Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), *effective* **8/01/87.** [78a, Complaint, para 14; 96a, Motion. to Dismiss]

Never the less, the decision of the Circuit Court does not include what facts control the case. It opted to conclude, "the facts are known to the parties." After that, the entire Case is resolved without a finding of facts. (1a-3a). Plaintiff lāter argued in a rehearing petition to the Circuit Court, that it had deliberately withheld the facts, in order that the wrong law could be applied. [Rehr'ing p.12, line 1, filed Feb. 3, 1998]

(c) Laws of the State

In Erie Railroad Co v. Tompkins, (1938) 304 U.S. 64, 78, and cases decided thereunder, such as in Intel Corp v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1556 (9th Cir. 1991); and Arizona Elec Power Coop., Inc. v Berkeley, 59 F.3d 988, 991 (9th Cir. 1995), it is well settled that when interpreting andapplying of State law, federal courts are bound by prior decisions of the State's highest court. Erie Railroad Co. v. Tompkins, 304 U.S. 64, supra 78. (1938) The issues-

governed under State law in federal dispute below, was whether Plaintiff employer's property rights and interests were governed under Williams v. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989) (42a) - an action authorized under State law; [C.C.P. 1085 and 1094.5, and C.C.P. 1908] or whether preempted under Williams v. City of Los Angeles, 229 Cal. App.3d 1627 (1991): that applied and enforced City charter provision Art. XVIII, Section 190.111(A)(1) against the judgment under State law, after the Judgement had been affirmed by 1989 State appeal decision.

The Complaint alleges the former, Williams v. City of Los Angeles; Cal.App.2nd Civ. B035287 (Aug. 10, 1989) is controlling. That it, State law and the Constitution, preempts the May 10, 1991 State Appeal decision. (74a, Complaint)

The reason alleged that the former (1989 decision) preempts the latter (1991 decision) is because of California Government Code, Section 3300 through 3309.5 and the State's *general laws.* They establish the former State appeal decision (1989) and preempts City section 190.111 as applied and enforced by the latter. (1991). Baggett vs. Gates, (1982) 32 Cal.3d 128, 135-36. (applying Cal.Govt.Cd. 3300 et seq.)

Williams vs. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) is preempted by another decision of the State's highest court. Skaggs v. City of Los Angeles, (1954) 43 Cal.2d 497, 504-505. In "Skaggs", the California Supreme Court enforcing City Charter provision Article XIX, Section 202(18), affirms the action plaintiff herein engaged, after the City terminated him from his employment as a police officer for the City: **(1)** the enforcing of pension rights; and **(2)** the institution of the State court challenge of the termination. (p.xxi, City Charter, Article XIX, Section 202(18))

Slater v. Blackwood, 15 Cal.3d 791, 795, the California Supreme Court enforcing res judicata, renders Williams v. City of Los Angeles, Cal App. 2nd Civ. B035287 (Aug. 19, 1989) as preemptive over Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991). The former

1989 decision affirms a valid judgment. Thus a complete bar to the further litigation (57a) and the 1991 State appeal decision. [86a, "Estoppel Allegations"; P.xviii, CCP 1908]

The foregoing establish that when the federal courts below applied and enforced Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991) in the face of Williams v. City of Los Angeles, Cal.App. 2nd Civ. B035287 (Aug. 10, 1989) to defeat the federal Complaint, according to state law, it conflicts with the just cited decisions of the California Supreme Court. ("Baggett", etc. "Skaggs", etc. and "Slater")

The application below of F.R.C.P. 12(b)(6) is in conflict with relevant decisions of this Court. . . Contrary to the decision, the Complaint does pose federal questions suitable for federal jurisdiction, even though the decision challenged was rendered by an intermediate court of the State:

Because law (p. xviii, "202") confers plaintiff's position of employment to him and it is public employment, it is protected under the due process and equal protection clause of the 14th Amendment. Board of Regents v. Roth, (1972) 408 U.S. 564, 569. [77a, Complaint paragraph 10 through 13]

When the City deprived plaintiff of his employment by involuntary terminations, (37a & 39a) this triggered State held rights to institute and fully prosecute a state court challenge of the termination. (38a & 41a) Cal. Govt.Cd. 3309.5; Cal.Cd.Civ.Proc. 1085, 1094.5. [Complaint, para(s) 13&38] P.xvi, Calif. Peace Officers Procedural . Rights Act.

After the judgment successfully challenging the termination was fully affirmed from the City's appeal, (42a) State law under the Government Code (3301, 3309.5 et seq.) and the State's general laws, commands the court to fully enforce the judgment. Baggett v. Gates, (1982) 32 Cal.3d 128, 135-136. Including collateral attacks against the judgment. Slater v. Blackwood, 15 Cal.3d 791, 795. (CCP 1908)

Enforcing a State court judgment that set aside an employment termination, mandates that plaintiff be returned to same position he occupied, *but for* the termination. In this

Case: Plaintiff, as a police lieutenant with the City's police department, subject to only a term of suspension for the period of 30 days. (55a, Suspension from remand) United States vs. General Motors, (1945) 323 U.S. 373, 378-379; First Lutheran Church vs. Los Angeles County, (1987) 482 U.S. 304, 305.

Federal courts are empowered to provide injunctive relief against "executive" actions of official's (123a) and against "judicial" actions of a State court. (61a) When the actions are illegal and unconstitutional. Mitchum v. Foster, (1972) 407 U.S. 225, 230, 237. Dombroski v. Pfister, (1965) 380 U.S. 479 (abstention doctrine inappropriate when statute is justifiably challenged) (See 171a - "Reply Brief")

The Complaint which the federal courts below (9a) acknowledged had to accept as true: Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1986); Russell v Landrieu, 621 F.2d 1037, 1039 (9th Cir. 1980), **alleges:**

1. When the City, through the State courts, changed the claim of the action that had already set aside the termination, to a claim to be re-employed from being "retired", (57a) and when the decision of being "retired" (61a) was *retroactively* enforced against the Judgment (41a) for reinstatement: It was a violation of the right to be free from expost facto Law by the U.S. Constitution. [Pam Am Petroleum Corp. v. Gibbons, 168 F.Supp. 867 (DC Cal.) affrm'd 262 F.2d 852 (9th Cir. 1959)] **(85a, Complaint)**

When the City applied and enforced pension ordinance Section 190.111 through the decision under Williams v City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), the Complaint alleges: **(a)** it violated the immunity accorded plaintiff under the California Constitution (Article 11, Section 7) and California Government Code 3300; **(b)** immunity from being subjected enforcement of City charter section 190.111, in a manner that nullified rights accorded plaintiff by a "special" and "general" laws of the State; **(c)** the "State" rights nullified by Section 190.111 and Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), was the right to fully enforce the judgment of the superior court (41a) after

it had been fully affirmed by the State's appeal court, (42a) that restored plaintiff. The State's Constitution and Laws as just stated, are what create the interest in his employment, guaranteed under the 14th Amendment of the United States Constitution. Board of Regents v. Roth, (1972) 408 U.S. 564, 569; Baggett v. Gates, (1982) 32 Cal.3d 128 supra 136. **(86a)**

3. When the City through the State Court of Appeal, litigated plaintiff to the class of being "retired" for *purposes of Section 190.111*: (66a, Williams v. City of Los Angeles, 229 Cal.App.2d 1627, supra 1631 (1991)), the City: **(a)** applied and enforced was an invidious classification scheme, **(b)** prohibited by the 5th and 14th Amendment of the United States Constitution. Schweiker v. Wilson, (1981) 450 U.S. 221, 230; United States v. Caroline Products (1938) 307 U.S. 144 **(c)** because, the "retired" classification under charter 190.111, **(i)** retroactively nullified the due process and equal protection of law of the judgment (41a-53a) that set aside the termination (61a) and **(ii)** the "retired" classification prospectively deprived plaintiff of the right to prosecute all of the federal claims from the termination. (4a, Order and 34a, Decision)

4. When the City under Williams v. City of Los Angeles, 229 Cal.App.3d 1627 (May 10, 1991), secured the decision that nullified the prior Judgment (41a) affirmed under Williams v. City of Los Angeles, Cal.App.2nd Civ. B035287 (Aug. 10, 1989); **(a)** this violated plaintiff's federally protected interest under the 14th Amendment, created by California's statutory and common-law rules of res judicata and collateral estoppel; **(b)** that prohibit re-litigation of issues that were or could have been litigation between the same parties in the initial litigation. Kremer v. Chemical Construction Corp., (1981) 456 U.S. 461 [84a Complnt. Para(s) 38-43]

A Relief From the Orders, Judgments and Decisions Below, Is Also Consistent With Relevant Decisions of This Court, Responding Too Judgments Obtained By Fraud

Upon proof of fraud on the court, any federal Court is with duty to grant relief against a judgment obtained by fraud.

Hazel - Atlas Glass Co. v. Hartford-Empire Co., (1944) 322 U.S. 238; U.S. v. Dunnigan, (1993) 507 U.S. 87 (perjury)

The instant petition has demonstrated the pervasive pattern of sham pleadings and actions that prompted it. Fraud and perjury obtained all of the judgments below. In the Reply Brief before the district court of appeal, (169a) plaintiff cited England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960), that a fraud upon the court is an unconscionable plan or scheme which is designed to improperly influence the Court in its decision. The litigation below showing the fraud:

165a, docket #22 (Memorandum and Declaration supporting motion for default judgment)

110a, 113a-114a (Transcript of proceeding, (subject) City's motion to dismiss complaint for declaratory judgment);

125a-128a (Motion to 9th Circuit for disqualification);

132a-135a (Request for Oral Argument); and

136a *through* **152a** (Petition for Review, etc.)

The just cited Record show that counsel and an agent for the City, while under oath, misrepresented the law-of-the-case of Williams v City of Los Angeles, 229 Cal.App.3d 1627 @ **1629-30** (May 10, 1991), as legal authority plaintiff had voluntarily surrendered his position of employment, by making the service pension, effective before of the City's termination. The City et al and the federal courts below used the perjured Declaration, to dismiss both federal causes of action. **(104a-105a, declaration; 5a decision denying declaratory relief; 26a, denying civil rights)**

This Cases poses a 14th Amendment question the Court should also intervene and directly settle:

Whether after being subjected to an involuntary termination from public employment and thereafter applying for and being approved a pension, a public employee cannot state a cause of action in any court to remedy the termination, because the employer had approved the pension.

From the foregoing, the petition should be granted.

Dated: May 24, 1998 Ronald Williams

Ronald Williams, in pro se